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on behalf of himself and others similarly situated
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 STEVEN THAMES, on behalf of himself
and others similarly situated,

12 Plaintiff,

13 vs.
14

CENTRAL TRANSPORT LLC, a Indiana
15 limited liability company; and DOES 1
through 50, inclusive

16 Defendants.
17
18
19

Case No. 34-2020-00283179-CU-OE-GDS

Assigned to the Hon. Russell L Hom

Department: 47

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Yeremian; and [Proposed] Order]*

Date: September 30, 2020

Time: 1:30 p.m.

Dept.: 53

Reservation # 2526097

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Steven Thames (“Plaintiff”) filed a class action complaint in the Superior Court
4 of the State of California, Sacramento County against Defendant Defendant Central Transport
5 LLC (“Defendant”), Case No. 34-2020-00283179-CU-OE-GDS, alleging (1) failure to pay
6 minimum wages; (2) failure to pay wages and overtime; (3) recovery of reporting time pay (4)
7 failure to provide meal periods or compensation in lieu thereof in violation of Labor Code §
8 226.7; (5) failure to provide rest breaks or compensation in lieu thereof in violation of Labor
9 Code § 226.7; (6) failure to reimburse for necessary business expenditures in violation of Labor
10 Code § 2802; (7) failure to provide accurate, itemized wage statements in violation of Labor Code
11 § 226(a); (8) failure to keep required payroll records under Labor Code §§ 1174 and 1174.5; (9)
12 violation of Labor Code § 221; (10) failure to provide all wages due upon termination; (11)
13 violations of the unfair competition law: B&P section 17200 *et seq.*; and (12) penalties pursuant
14 to the Private Attorneys General Act (“PAGA”) under Labor Code § 2699 *et seq.*

15 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Settlement” or
16 “Settlement Agreement”), filed concurrently herewith, the class consists of all current and former
17 hourly-paid, non-exempt dock workers who worked for Defendant in the State of California
18 during the Class Period, which is the period from January 1, 2017 through September 28, 2020.
19 After engaging in substantial investigation and extensive negotiations with the assistance of a
20 respected third-party neutral, Honorable Michael A. Latin (Ret.), the parties have agreed to settle
21 all claims alleged in the lawsuit on a class-wide non-reversionary basis for \$600,000, inclusive of
22 all fees and costs. All 485 Class Members shall receive a settlement share unless they opt out.

23 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
24 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
25 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the
26 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
27 (“Settlement” or “Settlement Agreement”) filed concurrently herewith; (2) approving the Notice
28 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth

1 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)
2 setting a hearing for final approval of the class action settlement.

3 **II. STATUS OF THE LITIGATION**

4 **A. Procedural History**

5 On July 1, 2020, Plaintiff Steven Thames sent notice to the LWDA outlining Plaintiff's
6 intent to bring a representative action pursuant to PAGA for alleged Labor Code violations.

7 On August 11, 2020, Plaintiff sent an amended notice to the LWDA.

8 On August 12, 2020, Plaintiff Steven Thames filed a class action complaint against
9 Defendant in the Superior Court for the State of California, in Sacramento, Case Number 34-
10 2020-00283179-CU-OE-GDS, alleging (1) failure to pay minimum wages; (2) failure to pay
11 wages and overtime; (3) recovery of reporting time pay (4) failure to provide meal periods or
12 compensation in lieu thereof in violation of Labor Code § 226.7; (5) failure to provide rest breaks
13 or compensation in lieu thereof in violation of Labor Code § 226.7; (6) failure to reimburse for
14 necessary business expenditures in violation of Labor Code § 2802; (7) failure to provide
15 accurate, itemized wage statements in violation of Labor Code § 226(a); (8) failure to keep
16 required payroll records under Labor Code §§ 1174 and 1174.5; (9) violation of Labor Code §
17 221; (10) failure to provide all wages due upon termination; (11) violations of the unfair
18 competition law: B&P section 17200 *et seq.*; and (12) penalties pursuant to the Private Attorneys
19 General Act ("PAGA") under Labor Code § 2699 *et seq.*

20 **B. Investigation**

21 Before filing the lawsuit, Class Counsel investigated and researched the facts and
22 circumstances underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶
23 11.) This required thorough discussions and interviews between Class Counsel and Plaintiff
24 Steven Thames, as well as preliminary research into the various legal issues involved in the case.
25 (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff Steven
26 Thames's claims were well-suited for class and representative action adjudication owing to what
27 appeared to be a common course of conduct affecting a similarly situated group of employees.
28 (*Id.*)

1 Additionally, before filing the lawsuit, Class Counsel conducted a thorough investigation
2 of the facts and claims giving rise to the action, including: (1) conducting informal discovery, and
3 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
4 pay records as well as Defendant's employment policies and procedures, Plaintiff's personnel
5 files, relevant policies and other documentation; (3) researching the applicable law and potential
6 defenses; (4) constructing damage models based on interpretations of California law; and (5)
7 reviewing information provided by Defendant at the mediation. (Yeremian Decl., ¶ 12.) The
8 Class enumerated in this action is ascertainable because the Class Members may be readily
9 identified by reference to Defendant's records. (*Id.*) Defendant has agreed to share the
10 information from these records with the Class Action Administrator in order to identify and
11 contact the Class Members. (*Id.*) There are approximately 485 total Class Members. (*Id.*)

12 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
13 the propriety of class certification. (Yeremian Decl., ¶ 13.) After Class Counsel analyzed the
14 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
15 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
16 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

17 **C. Settlement Efforts**

18 On July 30, 2020 the parties mediated this case with the Honorable Michael A. Latin
19 (Ret.), a respected and highly experienced mediator in wage and hour class actions. During
20 mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including the
21 risks of litigation and the risks to both parties of proceeding with a motion for class certification
22 as well as the law relating to off-the-clock work, meal periods, and wage statements. (*Id.*) As a
23 result of the mediation, the parties agreed to settle the lawsuit according to the terms set forth in
24 the Settlement Agreement. (*Id.*; See Exhibit 1 attached to Yeremian Decl., "Settlement" or
25 "Settlement Agreement".)

26 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
27 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
28 Counsel believes that the recovery for each Class Member is fair and reasonable taking into

1 consideration the amounts received in other wage and hour class actions, the risks inherent in
2 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
3 settlement award he or she will receive. (*Id.*) Further, and based on the settlement negotiations,
4 which were extensive, and conducted in good faith and at arm's length between attorneys with
5 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
6 was the product of a non-collusive settlement process in which the parties were forced to make
7 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
8 (*Id.*)

9 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

10 Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay
11 \$600,000 ("Gross Settlement Fund") on a non-reversionary basis to settle and release all claims
12 asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Yeremian Decl.,
13 ¶ 15; Exh. 1, ¶ 12, 2:25-28, 1:1-3.) The Settlement Agreement defines the "Class Members" as
14 "as all current and former hourly-paid, non-exempt dock workers who worked for Defendant in
15 the State of California during the Class Period." (Yeremian Decl., ¶ 16; Exh. 1, ¶ 29, 5:1-4).
16 "Class Period" means the period from January 1, 2017 through September 28, 2020. (Yeremian
17 Decl., ¶ 16; Exh. 1, ¶ 6, 2:6.). The "Net Settlement Amount," available for distribution to Class
18 Members, shall be the Gross Settlement Fund, less the Class Representative Enhancement
19 Payments, Attorneys' Fees and Costs, Settlement Administration Costs, and seventy-five percent
20 (75%) of the PAGA Payment. (Yeremian Decl., ¶ 17; Exh. 1, ¶ 14, 3:6-8.). These amounts are
21 detailed as follows:

- 22 • not more than Two Hundred Thousand dollars (200,000) to Class Counsel for
23 attorneys' fees, and not more than Fifteen Thousand dollars (\$15,000) in costs; (Yeremian Decl.
24 ¶17, Exh. 1, ¶ 40(c), 13:1-11);
- 25 • not more than Seven Thousand Five Hundred dollars (\$7,500) to the Class
26 Representative for Service Enhancement Payment; (Yeremian Decl. ¶17, Exh. 1, ¶ 40(b), 12:15-
27 28);
- 28 • up to \$10,000.00 for the Settlement Administration Costs; (Yeremian Decl. ¶17,

1 Exh. 1, ¶ 40(e) 13:21-28);

2 • Twenty Five Thousand dollars (\$25,000) shall be allocated for settlement of
3 claims for civil penalties under PAGA, where 75% (\$18,750) will be paid to the LWDA and 25%
4 (\$6,250) will be included in the Net Settlement Amount and distributed to Settlement Class
5 Members); (Yeremian Decl. ¶17, Exh. 1, ¶ 40(d) 13:12-20.)

6 The “Individual Settlement Payment,” which is each Class Member’s share of the Net
7 Settlement Amount will require that the Settlement Administrator will calculate the total
8 Compensable Workweeks for all Settlement Class Members. The respective Compensable
9 Workweeks for each Settlement Class Member will be divided by the total Compensable
10 Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement
11 Class Member. Each Settlement Class Member’s Payment Ratio is then multiplied by the Net
12 Settlement Amount to determine the proportionate allocation. (Yeremian Decl., Exh. 1, ¶ 40(a) (i)
13 12:5-12.) Defendant shall pay its corporate payroll tax obligations on the payouts to Class
14 Members in addition to the Gross Settlement Fund. (Yeremian Decl., ¶ 19; Exh. 1, ¶ 12, 2:25-28,
15 3:1-3.)

16 The settlement amount was a compromise figure, factoring in the inherent risks related to
17 certification, liability and damages. (Yeremian Decl., ¶ 20.) However, taking into account all of
18 the circumstances of the action and the defenses raised by Defendant against certification,
19 liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

20 Attached to the Settlement Agreement as Exhibit 1 and Exhibit 2 is the Notice of Class
21 Action Settlement and Request for Exclusion (the “Class Notice”). Class Members shall each
22 receive a notice packet which will include the Class Notice, via first class mail (after the
23 Settlement Administrator conducts a national change of address search). (Yeremian Decl., ¶ 21;
24 Exh. 1, ¶ 39(a), 9:6-13.) Class Members will have an opportunity to dispute the information
25 provided in their Notices of Class Action Settlement and they may produce evidence to support
26 the information is inaccurate. (Yeremian Decl., ¶ 22; Exh. 1, ¶ 39(a)(ii), 9:22-28, 10:1-2.; *see also*
27 Class Notice, **Exhibit 1** attached to the Settlement Agreement.) The Settlement Administrator
28 shall decide the dispute and may ask Defendant to produce the personnel and payroll files of the

1 Class Member disputing their credited workweeks in order to resolve the dispute. (Yeremian
2 Decl., ¶ 22; Exh. 1, ¶ 39(a)(ii), 9:22-28, 10:1-2.) Class Members wishing to opt-out from the
3 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
4 Administrator within the Response Deadline. (Yeremian Decl., ¶ 23; Exh. ¶ 39(a)(iii)(b), 10:8-
5 22.) The Response Deadline will be forty-five (45) calendar days from the initial mailing of the
6 Notice of Class Action Settlement. (*Id.*)

7 Class Members will also have the opportunity to object to the Settlement Agreement, by
8 filing a valid Objection with the Court and serving copies of the Notice of Objection on the
9 Parties before the Response Deadline. (Yeremian Decl., ¶ 24; Exh. 1, ¶ 39(a)(iii)(c), 10:24-28,
10 11:1-12.)

11 The parties have also agreed that CPT Group, Inc. (“CPT”) shall handle the notice and
12 claims administration (Exh. 1, ¶ 28, 4:27.), and the parties respectfully request this Court to
13 appoint CPT to handle those procedures. The procedures for mailing notice and processing
14 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the
15 Stipulation. (Exh. 1, ¶39, 9:3-28, 10:1-28, 11:1-12.)

16 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

17 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
18 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
19 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
20 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
21 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
22 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
23 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

24 To certify a settlement class, the Court must find the two primary requirements for
25 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
26 defined community of interest in the questions of law and fact involving the parties to be
27 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
28 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

1 **A. There Is A Numerous and Ascertainable Class**

2 Whether a class is ascertainable is determined by examining the class definition, the size
3 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
4 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
5 1271.) Class members are “ascertainable” where they may be readily identified without
6 unreasonable expense or time.

7 Plaintiff contends, and Defendant do not dispute for settlement purposes only, this
8 requirement and the requirement of numerosity is met. Class Members are all current and former
9 hourly-paid, non-exempt dock workers who worked for Defendant in the State of California
10 during the Class Period, which is the period from January 1, 2017 through September 28, 2020
11 (Yeremian Decl., ¶ 66(a).) Documents and information exchanged between the parties reflect a
12 class of approximately 485 Class Members. (Yeremian Decl., ¶ 66(a).) The Class Members have
13 already been identified by reference to Defendant’s payroll and personnel records. (Yeremian
14 Decl., ¶ 66(b).)

15 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

16 **B. There Is A Well-Defined Community of Interest**

17 A community of interest is established by the predominance of common issues of law and
18 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

19 [D]oes not depend upon an identical recovery, and the fact that each
20 member of the class must prove his separate claim to a portion of
21 any recovery by the class is only one factor to be considered ... The
22 mere fact that separate transactions are involved does not of itself
23 preclude a finding of the requisite community of interest so long as
24 every member of the alleged class would not be required to litigate
25 numerous and substantial questions to determine his individual right
26 to recover subsequent to the rendering of any class judgment which
27 determined in plaintiffs’ favor whatever questions were common to
28 the class.

Id. at 809.

26 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
27 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
28 Class is united in its proof. (Yeremian Decl., ¶ 66(e).) Because Plaintiff has alleged a single

1 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
2 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
3 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
4 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
5 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
6 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
7 inference ““eliminates the need for each class member to prove individually the consequences of
8 the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
9 (1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

10 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
11 provide meal periods, failure to pay wages and overtime due to allegedly common and unlawful
12 policies, the resulting failure to pay final wages when required, the failure to provide accurate
13 paystubs, the largely derivative claims under the Business & Professions Code and PAGA.
14 Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends
15 these practices resulted in a failure to compensate employees at termination, and incomplete
16 wages displayed on wage statements. The outcome of litigation on this matter depends upon
17 questions that are common to Class Members. (Yeremian Decl., ¶ 66(f).) While Defendant
18 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
19 Member, but rather on the basis of facts common to them all. It is also true that these issues of
20 liability can be determined on a class-wide basis. (*Id.*)

21 C. The Named Plaintiff’s Claims Are Typical

22 A class representative’s claims are typical when they arise from the same event, practice,
23 or course of conduct that gives rise to the claims of other putative class members, and if their
24 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
25 necessarily identical to the claims of other class members. It is sufficient that the representative is
26 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
27 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
28 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class

1 representative must have identical interests with the class members.”) Thus it is not necessary that
2 the class representative should have personally incurred all of the damages suffered by each of the
3 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

4 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
5 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
6 basis and are based on the same legal theories. (Yeremian Decl., ¶ 66(c).) Plaintiff was employed
7 by Defendant during the Class Period, and were subject to the allegedly unlawful meal and rest
8 period policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
9 member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
10 wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this
11 was an individual action, applies to the other Class Members as well. The answer to these
12 questions would determine Defendant’s liability to the putative class. (*Id.*) Thus, the claims of
13 Plaintiff is typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement
14 is satisfied.

15 **D. Adequacy of Class Counsel and Class Representatives**

16 Class Counsel are experienced in class actions, have represented their clients zealously
17 and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 66(d).) The Class Representatives’
18 interests are aligned with those of the Class Members, they have suffered the same injuries as the
19 Class Members, and have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
20 Representatives are adequate.

21 **E. Predominance and Superiority**

22 Individual issues do not predominate over those common to the class. (Yeremian Decl.,
23 ¶66(f).) The class action mechanism is superior to individualized actions because Class Members
24 have little incentive to bring claims that are small. (*Id.*)

25 **V. THE TWO-STEP APPROVAL PROCESS**

26 Any settlement of class action litigation must be reviewed and approved by the Court.
27 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
28 detailed review after the notice has been distributed to the class members for their comments or

1 objections. In this regard, the Manual for Complex Litigation (Second) explains:

2 A two-step process is followed when considering class
3 settlements... If the proposed settlement appears to be the product
4 of serious, informed, non-collusive negotiations, has no obvious
5 deficiencies, does not improperly grant preferential treatment to
6 class representatives or segments of the class, and falls within the
range of possible approval, then the court should direct that notice
be given to the class members of a formal fairness hearing, at which
evidence may be presented in support of and in opposition to the
settlement.

7 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the
8 class action settlement by the trial court is simply a conditional finding that the settlement appears
9 to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County*
10 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
11 Thus, the preliminary approval of the class action settlement by the trial court is simply a
12 conditional finding that the settlement appears to be within the range of acceptable settlements.

13 Settlements to resolve PAGA claims also require court approval. (Labor Code §
14 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
15 for as little as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
16 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
17 also approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*,
18 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
19 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
20 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
21 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
22 \$300,000 settlement).)

23 A review of the preliminary approval criteria demonstrates a substantial basis for granting
24 the instant Motion and proceeding to a full settlement hearing.

25 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

26 As a matter of public policy, courts both encourage the use of the class action device and
27 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
28

1 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent
2 a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d
3 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
4 action litigation is concerned.”).)

5 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
6 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
7 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
8 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
9 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
10 particularly when settlement has been reached by experienced counsel familiar with the litigation.
11 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
12 1087.)

13 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
14 several factors that should be analyzed in determining if a class action settlement should be
15 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
16 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
17 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
18 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
19 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

20 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
21 informal discovery before entering into meaningful settlement negotiations in this matter,
22 including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s
23 time and pay records. (Yeremian Decl., ¶¶ 11-12.) This discovery permitted Class Counsel to
24 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
25 Counsel is very experienced in the handling of wage and hour class actions and supports this
26 Settlement. (Yeremian Decl., ¶¶ 3-9.)

27 **A. The Strength of Plaintiff’s Case.**

28 The claims in this action include failure to pay minimum and overtime wages, failure to

1 provide meal breaks or provide premium pay in lieu thereof, failure to provide accurate wage
2 statements, failure to pay final wages when due, and related claims for violations of California's
3 Business & Professions Code and for penalties under PAGA. (Yeremian Decl., ¶ 10.)

4 Class Counsel felt confident that the claims in this case would be certified given that
5 Defendant's policies were applicable to all Class Members and unlawful on their face. (Yeremian
6 Decl., ¶¶ 25-49.) Defendant contends, however, that the policies complied with California
7 law.

8 **B. The Risks Associated with the Merits.**

9 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
10 Plaintiff contends that he and other Class Members were not properly provided meal periods.
11 (Yeremian Decl., ¶¶ 29-32.) Defendant disagreed with Class Counsel's interpretation of the law
12 and facts. Defendant argued that it had valid meal break policies that applied to Class Members
13 and Class Members had discretion over when they took their meal periods. Additionally,
14 Defendant did not have an auto-deduct policy and Defendant's time records reflected that Class
15 Members received their meal periods most of the time. Further, all Class Members, including
16 Plaintiff, signed valid second meal break waivers. Defendant contended that Class Members were
17 given a reasonable opportunity to take their meal periods, and in fact, Defendant's records show
18 that Class Members received their meal periods most of the time. (*Id.* at ¶ 31.) Moreover,
19 Defendant's maintained that this claim was not subject to class certification because Defendant
20 implemented a facially valid meal period policy during the relevant time period and there is no
21 evidence, let alone "substantial evidence" of any class-wide policies or practices that resulted in a
22 systematic occurrence of meal period violations. *See e.g., Capitol People First v. State Dept. of*
23 *Developmental Services*, (2007) 155 Cal.App.4th 676, 694 (certification proper only where "proof
24 of systematic deficits in respondents' policies and practices [demonstrated that claims were]
25 amenable to class treatment as required by Sav-On."). If Defendant's contentions are proven true
26 and prevail in trial, the likely outcome of this claim would be no recovery for the Class Members.
27 Plaintiff also contended that Defendant did not provide Class Members with paid 10-minute rest
28 breaks for every four hours or major fraction thereof. (Yeremian Decl., ¶ 33.) Class Members

1 consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks
2 of not less than ten minutes for each consecutive four hour shift which they were denied. Class
3 Members were required to work through their rest breaks, and through their entire shifts.
4 Defendant maintained that it did provide the reasonable opportunity for Class Members to take
5 duty-free rest breaks. (Yeremian Decl., ¶ 34.) Defendant also pointed out that, unlike meal
6 periods, rest breaks need not be recorded and employees need not be allowed to leave the
7 premises. Additionally, while Plaintiff contended that Defendant's rest period policy failed
8 to comply with California law because it did not allow Class Members to leave the
9 premises for rest periods, Defendant provided Class Counsel with ample legal authority
10 supporting Defendant's position that this policy was lawful. As such, Defendant argued
11 that Plaintiff's rest period claim was not suitable for class treatment because
12 individualized issues predominate. As these considerations would likely depress the damages
13 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
14 rest-break claim.

15 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
16 wages for all hours worked, in violation of minimum wage laws. (Yeremian Decl., ¶ 27.) Plaintiff
17 maintained that Employees were required to work off-the-clock and in excess of their scheduled
18 shifts, without compensation. Specifically, Defendant required Employees to work post-shift, in
19 excess of their scheduled shifts for which they were not paid wages as Employees were required
20 to spend working hours under the control of Defendant by Employees performed dock work after
21 the scheduled shift and were not compensated for this time. Furthermore, Employees were
22 required to work during during meal breaks. Plaintiff contended that he and other Class Members
23 were not paid proper overtime and minimum wages because Defendant failed to pay Class
24 Members wages for hours worked in excess of eight hours in a day. Additionally, Plaintiff
25 alleged that Defendant's policies and practices requiring Employees to call in or otherwise report
26 to work, but they were not provided reporting time pay for the same in violation of California
27 law. Employees were not paid for the time spent calling Defendants numerous to find out if they
28 must report for work, or any reporting time pay if they were told not to report for work.

1 Defendant contends that: at all times they maintained policies requiring all Class Members
2 to be clocked in while performing any work and not authorizing any off the clock work; they
3 implemented procedures to ensure that their time keeping systems accurately recorded the time
4 worked by Class Members; they paid for all recorded hours worked; that Class Members were
5 trained to record all hours worked; and that they paid proper minimum wages and overtime where
6 applicable. (*Id.* at 28.) Additionally, Defendant argued that Plaintiff and Class Members were
7 paid for all hours worked. Defendant also maintained that the allegations regarding failure to pay
8 wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of
9 Labor Code § 510. Defendant also contended that there was never any requirement for Class
10 Members to call in to check if they were scheduled for work that day or the next day so that there
11 was no reporting time pay problem or off the clock work based on this alleged practice.

12 Defendant argued that given their written policies and practices, any unrecorded hours were likely
13 subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this
14 claim, Class Counsel had to apply a significant discount to damages based on this theory.

15 Plaintiff also claims that he worked for Defendant and in the course of performing their
16 job duties, incurred necessary business related expenses, including, but not limited to cellphone
17 usage. (*Id.* at ¶ 42.) Defendant maintained that Plaintiff and the Class members were not required
18 to use their cellphones. (*Id.*)

19 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

20 In order to establish liability for these penalties, Plaintiff would first have to establish
21 liability for the underlying claims. Moreover, Defendant argued that meal violations, even if
22 established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting
23 time claim. (Yeremian Decl., ¶¶ 35, 38.) For example, the California Supreme Court has recently
24 held that claims for meal period penalties do not constitute “action[s] brought for the nonpayment
25 of wages” for the purpose of determining statutory fees. (*Kirby v. Immoos Fire Prot., Inc.* (2012)
26 53 Cal.4th 1244, 1259.) In *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the
27 Court of Appeal noted an action for unlawful meal periods under “cannot support a section 203
28 penalty because section 203, subdivision (b) tethers the waiting time penalty to a separate action

1 for wages.” Authority is divided on this point. Moreover, although authority is divided, many
2 district court rulings support the conclusion that any unpaid meal period premium pay cannot give
3 rise to derivative wage statement liability. (See, e.g., *Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
4 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393
5 (noting a wage statement need only document compensation *actually received* and the hours used
6 to calculate that compensation).) In *Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal. App. 5th
7 1308, 1336-37, the court explained that the purpose of Labor Code § 226 is to penalize the
8 employer if the wage statement fails to show the employer's calculation of the hours and rates
9 used in making the payment - distinct from showing what should have been used. Thus, imposing
10 a Labor Code § 226 penalty merely because the values used to calculate the wages that were
11 shown in the wage statement were wrong, but were in fact the figures used by the employer in
12 calculating pay, would permit an impermissible “double recovery.” *Id.* at 1336. Thus, it is unclear
13 if the Court would have permitted untimely wage penalties or wage statement violations for
14 Defendant’s alleged failure to provide meal period penalties.

15 Defendant provided Class Counsel with sample itemized wage statements that refuted
16 Plaintiff’s position that the wage statements show the start date of the pay period is the same as
17 the end date, and case law supporting its position that Defendant’s wage statement complied with
18 California law. (Yeremian Decl., ¶ 36.) Specifically, while Plaintiff contends that the wage
19 statement did not specify the overtime rate of pay, the overtime rate could be easily determined
20 by looking at the contents of the wage statement. *Ontiveros v. Safelite Fulfillment, Inc.*, 2017
21 WL6261476 (C.D. Oct. 2017)

22 In addition, Plaintiff would have to establish that Defendant’s conduct was willful to
23 recover waiting time penalties. (Labor Code § 203.) With these penalties, there is always the risk
24 that the trier of fact would not have held that Defendant’s actions were done “willfully.” A good
25 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
26 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges
27 that Defendant’s failed to pay for all hours worked and premiums for non-compliant meal breaks.
28 Plaintiff contends the Class Members are entitled to these wages and premiums, which he alleges

1 were not paid at the time of their termination or resignation. If Plaintiff is successful on his
2 claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant, however, contends
3 they provided employees with the reasonable opportunity to take meal breaks, asked Class
4 Members to confirm the accuracy of their time records, and therefore had good-faith defenses
5 under *Brinker* and its progeny. As such, there was some risk associated with waiting time
6 penalties that Class Counsel had to consider. (Yeremian Decl., ¶¶ 38-41.)

7 **D. The Risks Associated with the PAGA Penalties.**

8 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
9 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
10 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
13 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
14 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
15 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
16 penalty amount specified by this part if, based on the facts and circumstances of the particular
17 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
18 confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
19 1135 [reducing PAGA award on this basis].) For example in *Nordstrom Com. Cases*, (2010) 186
20 Cal. App. 4th 576, 579 the Court of Appeal ruled that the “[Trial court did not abuse its discretion
21 in approving a settlement which does not allocate any damages to the PAGA claims.” Therefore
22 if Labor Commissioner - on whose behalf Plaintiff is prosecuting this action for civil penalties -
23 would not impose civil penalties in a case like this, the Court may not award civil penalties.

24 The provisions of the Labor Code potentially triggering PAGA penalties in this case
25 include but are not limited to Labor Code §§ 98.6, 201, 202, 203, 204, 210, 218, 221, 223, 226,
26 226.3, 226.7, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1197.1 1194, 1194.2, 1197,
27 1198, 1198.5, 1199, 1670.5, 2698, 2699, *et seq.*, 2802, 6300 *et seq.*, and 6712; provisions of the
28 Industrial Welfare Commission (IWC) Wage Order(s), including Sections 3, 4, 7, 9, 11, and 12;

1 and California Business & Professions Code § 17200 et seq. Plaintiff also seeks PAGA penalties
2 for Defendant's alleged failure to produce personnel records, and retaliatory practices pursuant to
3 Labor Code § 98.6. Such claims would be subject to manageability concerns and would be
4 difficult to prosecute given the fact that liability would be based on individual testimony of
5 Class Members about whether they were retaliated against for making complaints about their
6 wages or whether they did not receive their personnel file after requesting it from Defendant.
7 Defendant also contended that, in addition to an open door policy, Defendant provided Class
8 Members with access to an ethics hotline where employees could complain anonymously and that
9 Defendant's records showed that no Class Member, including Plaintiff, made any complaints
10 about their wages or other Labor Code violations during the relevant time period. With respect to
11 Plaintiff's PAGA claim for failure to maintain toilet facilities and toilet air facility temperatures,
12 Defendant maintained that Class Members were always provided access to clean and maintained
13 toilet facilities. Additionally, although this generally depended on the location where they
14 worked, Defendant contended that dock workers always worked in close proximity to indoor
15 toilet facilities that were maintained at appropriate temperatures. Moreover, to the extent there
16 were any issues with respect to toilet facilities and toilet air facility temperatures, Defendant
17 contended that such issues would vary significantly by toilet facility, location, and time period.
18 Consequently, Defendant contended that claims concerning the toilet facilities and toilet air
19 facility temperatures would not be amenable to resolution on a representative or class basis. As
20 there was no evidence of any companywide policy or procedure or systematic practice with
21 respect to maintaining toilet facilities or toilet air facility temperatures, there was and is a
22 significant risk that Plaintiff would be unable to recover for such claims on a representative or
23 class basis.

24 Plaintiff discounted potential penalties under this claim given this authority, and for other
25 reasons. The PAGA claims are premised on the same underlying meal, wage statement, and
26 waiting time claims, and thus subject to the same disputes and defenses. There is also a dispute as
27 to whether violations in later pay periods trigger the \$200 penalty under PAGA as a "subsequent
28 violation." (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there

1 is a fair amount of risk associated with PAGA claims. (Yeremian Decl., ¶¶ 43-45.) The parties
2 also considered that the purpose of PAGA is to “achieve maximum compliance with state labor
3 laws,” and that through the proposed settlement, Defendant has agreed to ensure policies comply
4 with California law. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.)
5 This makes the settlement’s contemplated PAGA payment of \$25,000 appropriate.

6 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
7 and in the best interest of the Class. (Yeremian Decl., *passim*.)

8 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

9 Given the risks outlined above, the issues in this case were complex and the risk for
10 Plaintiff and the Class Members associated with this litigation was high. (Yeremian Decl., ¶¶ 50-
11 53.) A class trial would have required the retention of expensive expert witnesses, the accrual of
12 extensive litigation costs, and the parties would have had to spend a substantial amount of time.

13 Finally, given the complexity and unsettled nature of the issues, it is likely that any
14 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
15 further delay for the Class Members who have already waited years for resolution in this matter.

16 **F. The Risk of Maintaining Class Action Status Through Trial.**

17 In class actions, decertification is always a possibility. There is always a risk that a trial of
18 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
19 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
20 decertification is a real risk that Class Counsel must take into account.

21 **G. The Amount Offered in Settlement.**

22 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
23 collusive, and arms-length negotiations between the parties with an experienced mediator. In
24 order to determine the approximate potential damages which would be owed to each of the Class
25 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
26 Counsel with records for a sampling of the class members. By analyzing this information, Class
27 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

28 There are approximately 485 total Class Members. Class Counsel estimated the maximum

1 exposure for the meal period claim is \$321,914.88. (Yeremian Decl., ¶¶ 32.) Class Counsel
2 estimated the maximum exposure for the rest period claim is \$321,914.88. (Yeremian Decl., ¶¶
3 34.) The maximum exposure on the unpaid wage claim is \$402,393.60. (*Id.* at ¶ 28.) The
4 maximum exposure for failure to reimburse business expenses is \$89,820.00. (*Id.* at ¶ 42) The
5 maximum exposure for the wage statement claim is \$1,793,900. (*Id.* at ¶ 37.)¹ The maximum
6 exposure for the waiting time penalties claim is \$430,080. (*Id.* at ¶ 41.) On the PAGA claim,
7 Plaintiff's estimated maximum exposure is \$1,793,900. (*Id.* at ¶ 46.)

8 Once Class Counsel was able to determine the maximum potential damages, it was able to
9 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 48-53.) Class Counsel analyzed
10 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
11 of success on the core claims. (*Id.*) However, Defendant disputed this contention, deny all
12 wrongdoing in this matter and are confident they have strong legal and factual defenses to
13 Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the
14 claims for unpaid wages and waiting time penalties were not as strong, because various defenses
15 including issues not suitable for class treatment, no detriment to the class members over time, and
16 *de minimis* defenses. Defendant may have had the opportunity to establish that it had a good faith
17 belief that they were complying with law. (*Id.*) After taking into account the likelihood of success
18 on each claim and the challenges faced with certifying these claims, Class Counsel determined
19 that the settlement amount of \$600,000 was fair and reasonable.

20 Under the Settlement, each of the approximately 485 Class Members will receive on
21 average \$719.07 after expenses. (*Id.* at ¶ 49.) Plaintiff feels that this Settlement is fair, reasonable,
22 and advantageous to the class. (*Id.*) The Settlement is also consistent with, if not in excess of, the
23 average per class member recovery rates that have been recently approved by the courts *See e.g.*,
24 *Diamond Resorts Wage and Hour Cases*, No. E071769, 2020 WL 4188098, at *4 (Cal. Ct. App.
25 July 21, 2020) (approving a settlement with the average recovery of \$550 per class member over
26 the objections of class members).

27
28 ¹ This number overstates the damages as the maximum amount of penalties is limited to \$4,000 per Class Member
and a higher penalty of \$100 is used for each violation.

1 To summarize, the Settlement here is fair because it provides a substantial payment to
2 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
3 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
4 allocated to Class Members proportionally based on their Payout Ratio.

5 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
6 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
7 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim*.)
8 Throughout this case, Class Members have been represented by experienced counsel with many
9 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 3-9.)

10 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
11 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
12 conducting considerable informal discovery, and meeting and conferring with defense counsel
13 about same; reviewing and analyzing over 19,800 pages of time records and pay records, data on
14 the number of workweeks and average shift lengths and pay rates, and various employment
15 policies and procedures, Plaintiff's personnel file, and other documentation and information;
16 researching California law; preparing for and attending mediation; reviewing information
17 provided by Defendant at the mediation, including case law supporting Defendant's position with
18 respect to their rest period policy and itemized wage statements; and negotiating and finalizing
19 the Settlement Agreement and related documents. (Yeremian Decl., ¶¶ 11-14.)

20 Among those matters considered during the course of settlement negotiations were the
21 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
22 length of further litigation, including class certification and the appeals process; the present state
23 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
24 value of a settlement versus the long wait necessitated by any potential judgment in class
25 members' favor; the burdens of proof necessary to establish liability against Defendant; and
26 Defendant's defenses to the action. (Yeremian Decl., *passim*.)

27 These factors each indicated that the interests of Class Members are best served by a
28 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.

1 The Settlement Agreement confers a substantial benefit on the class of up to \$600,000. Moreover,
2 the settlement awards for each Class Member will be tailored to their workweeks during the class
3 period. (*Id.* at ¶ 18.) In addition Class Counsel secured prospective relief for the class in that
4 Defendant will ensure their policies comply with California law.

5 Class Counsel believes that the settlement is fair and reasonable and serves the best
6 interests of the Class Members. Although the recommendations of counsel proposing the class
7 settlement are not conclusive, the Court can properly take the recommendations into account,
8 particularly if counsel has been involved in litigation for some period of time, appear to be
9 competent, and have experience with this type of litigation, and significant discovery has been
10 completed. *See Newberg*, §11.47.

11 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND** 12 **REASONABLE**

13 It is appropriate to provide a relatively modest additional incentive payment to the class
14 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
15 F.Supp. 294.

16 Plaintiff is entitled to reasonable service payments for his efforts and initiative in bringing
17 and helping to prosecute this class action. Plaintiff spent significant time better apprising himself
18 of his rights, deciding whether remedial action should be taken, how it should be taken, searching
19 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing his
20 case and the law. (Yeremian Decl., ¶¶ 61-65.) In the end, Plaintiff decided to vindicate not only
21 his own rights but also those of her co-workers by filing a class action lawsuit.

22 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
23 contends he increased his risk of retaliation by prospective employers. (*Id.*) Plaintiff's lawsuit has
24 now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost
25 on a prospective employer who has to choose between an applicant who has never sued a prior
26 employer and one who has. (*Id.*) Plaintiff contends this risk is particularly real in the information
27 age, where employers can, more easily than ever, perform background checks of prospective
28 employees, sometimes with the stroke of a key. (*Id.*)

1 But Plaintiff did not allow his fear of the potential repercussions of being class
2 representatives deter him from acting for the benefit of Class Members. (*Id.*) To the contrary,
3 Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has devoted a
4 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
5 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
6 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
7 Counsel with information about Defendant and about the industry generally, reviewed documents,
8 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
9 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
10 signed the settlement agreement. (*Id.*)

11 Plaintiff has spent a significant amount of time with Class Counsel detailing their
12 knowledge of Defendant's practices. (*Id.*) They have diligently, adequately, and fairly represented
13 Class Members, and have not placed their interests above any member of the putative class. (*Id.*)
14 This sort of payment to a class representative has been a common feature of settlements
15 negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

16 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
17 \$7,500.00 to the Class Representatives is fair and reasonable. (*Id.*)

18 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 19 **CLASS MEMBERS.**

20 Constitutional due process requires that class members be provided with notice sufficient
21 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
22 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
23 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
24 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
25 convey information regarding the settlement and the class members' rights, entitlements, and
26 obligations; and afford class members the opportunity to present their objections. (*Id.*)

27 The Notice meets constitutional standards because it provides all the information a
28 reasonable person would need to make a fully informed decision about the settlement. It will

1 notify all class members of the terms of the settlement, of its effect on their rights, of their options
2 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
3 exercising those options. (Yeremian Decl., ¶¶ 54-56.) Moreover, the Notice will specifically
4 direct any class members who have questions or concerns to contact the Class Action
5 Administrator, CPT Group, or Class Counsel. (*Id.*)

6 The standard for determining the adequacy of notice is whether the notice has “a
7 reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior*
8 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the
9 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
10 notice by mail is preferred when possible and dissemination of combined certification/settlement
11 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
12 828.)

13 Here, the Class Notice packet will be sent via first-class mail to each class member.
14 (Yeremian Decl., ¶ 54.) If any Class Notices are returned undeliverable without a forwarding
15 address, the Settlement Administrator will use the national change of address database and
16 perform a skip trace to locate the class member and mail a new Class Notice to him or her at the
17 correct address. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

18 Pursuant to controlling authority, the proposed Class Notice and method of distribution
19 fully comport with due process requirements. Therefore, the Court should approve the Class
20 Notice and direct that it be distributed as proposed herein.

21 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

22 Non-settling parties and third parties periodically may attempt to object to proposed class
23 action settlements, but the right of non-settling parties to object at the final settlement approval
24 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
25 members have standing to object to a proposed settlement. “Beginning from the unassailable
26 premise that settlements are to be encouraged, it follows that to routinely allow non-class
27 members to inject their concerns via objection at the settlement stage would tend to frustrate this
28 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being

1 filed to obtain a good faith determination, no persons other than class members have standing to
2 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
3 1330.)

4 **X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
5 **REASONABLE AND SHOULD BE APPROVED.**

6 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
7 seek an award of fees of no more than \$200,000.00, approximately one-third percent of the Gross
8 Settlement Fund, and not more than \$15,000 in costs. The requested fees are fair compensation
9 for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation
10 solely on a contingent basis. (Yeremian Decl. ¶¶ 58-60.) Defendant will not oppose Class
11 Counsel's fees and cost request.

12 California courts routinely look to the federal courts on class action approvals. The Ninth
13 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
14 to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v.*
15 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
16 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
17 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts
18 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
19 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

20 Several courts have, however, expressed frustration with the "lodestar" approach for
21 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
22 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
23 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
24 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
25 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
26 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
27 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
28 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

1 Class Counsel's application for attorneys' fees in light of the facts and circumstances
2 surrounding this case is well within the range of reasonableness. Historically, courts have
3 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
4 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
5 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with
6 modest hours expended should not be penalized but should be rewarded for considerations of
7 time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

8 The attorneys' fees request provided for in the Settlement Agreement is commensurate
9 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
10 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
11 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
12 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
13 plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
14 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
15 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
16 counsel of one-third (1/3) of recovery achieved).)

17 In wage and hour class actions in particular, California trial courts have customarily
18 approved attorney's fees consistent with or greater than the percentage of the common fund
19 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
20 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
21 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
22 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
23 Angeles County Super. Ct. Case No. BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
24 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
25 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.
26 Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
27 *Restaurants*, Orange County Super. Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

28 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive

1 any compensation until recovery is obtained. (*See* Yeremian Decl., ¶¶ 58-60.) The Court should
2 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
3 requested award for Class Counsel is reasonable.

4 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
5 **APPROVAL**

6 The parties respectfully request this Court, as part of the preliminary approval process, to
7 grant the following relief and make the following orders:

- 8 1. Review and approve the Settlement Agreement;
9 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit

10 A;

11 3. Consider and determine that the proposed class action settlement as set forth in the
12 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

13 4. Enter an order conditionally certifying the action as a class action for settlement
14 purposes only and preliminarily approving the proposed class action settlement and the
15 Settlement Agreement;

16 5. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. to serve
17 as Class Counsel for settlement purposes;

18 6. Approve and appoint CPT Group, Inc. as the Class Action Administrator to handle the
19 notice and claims procedures as set forth in the Settlement Agreement;

20 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

21 8. Order Defendant to disclose to CPT the names, last-known addresses, telephone
22 numbers, dates of employment, and social security numbers of class members as set forth in the
23 Settlement Agreement;

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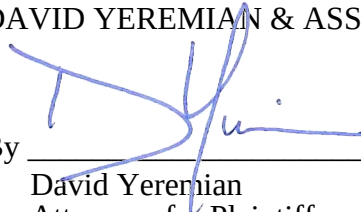
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- 1 9. Order that CPT mail the Class Notice to class members; and
2 10. Set a date for the Final Approval Hearing.
3

4 Dated: August 24, 2020

Respectfully submitted,

5 DAVID YEREMIAN & ASSOCIATES, INC.

6
7 By 

8 David Yeremian
9 Attorneys for Plaintiff
10 STEVEN THAMES and, on behalf
11 of himself and others similarly situated
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